

Deficiency Progress Report - Update 5

Report Submitted November 18, 2008

To complete the evaluation process, Cal/EPA requires the CUPAs to submit Deficiency Progress Reports that explain the CUPA's progress towards correcting the identified deficiencies. Deficiency Progress Reports are due every 90 days after the evaluation date until all deficiencies have been corrected.

CUPA Name: **Colusa County Environmental Health Division**

Evaluation Date: **July 25, 2007 and August 7, 2007**

Evaluators: JoAnn Jaschke, CalEPA
Mickey Pierce, DTSC
Jack Harrah, OES
Francis Mateo, OSFM

Date Update 1 submitted: November 16, 2007

Date Update 2 submitted: February 14, 2008

Deficiency corrected with update 2: Deficiency 6

Date Update 3 submitted: Due May 5, 2008

Date Update 4 submitted: September 18, 2008

Deficiency corrected with update 4: Deficiency 3, 5,

Date update 5 submitted: November 18, 2008

Deficiency corrected with update 5: Deficiency 1, 2, and 4

Deficiency 1: The CUPA is not collecting enough fees from the regulated businesses to cover their expenses.

Preliminary Corrective Action(s): By November 5, 2007, the CUPA will review their fees to ensure the fee structure covers their expenses to achieve a stable program. By February 4, 2008, the CUPA shall explain how the CUPA will move their revised fee structure through the normal budgeting process in order to obtain the necessary approvals from the CUPA's governing body. By July 1, 2008, the CUPA will provide Cal/EPA with a copy of their FY 08/09 fee schedule.

CUPA Corrective Action, (Update 1): Colusa County Environmental Health and the Fiscal Department of Health and Human Services recently reviewed the most current fees (10/31/07). The new fees will reflect actual hours from Environmental Health's "Time Studies". We still need to have the new fees approved by the Board of Supervisors. An anticipated time frame would be by July 1, 2008.

Cal/EPA Response, (Update 1): Cal/EPA accepts the progress Colusa County is making towards correcting this deficiency. Cal/EPA will continue to

track the progress being made to correct this deficiency via the deficiency progress reports. The next report is due February 14, 2008.

CUPA Corrective Action, (Update 2): Colusa County Department of Health and Human Services is planning to take our proposed fee schedule to the Board of Supervisors in the month of April, 2008. If all goes as planned, we would be able to implement our fees in the July billing.

Cal/EPA Response, (Update 2): Cal/EPA accepts the progress Colusa County is making towards correcting this deficiency. Cal/EPA feels the CUPA is on there way towards meeting the July 1, 2008, deadline for achieving a stable program with the proposed fee schedule. Continue to update Cal/EPA on the progress via deficiency progress reports.

CUPA Corrective Action, (Update 3): Colusa County Department of Health & Human Service went to the Board of Supervisors (BOS) on April 29, 2008 to have the Environmental Health fees adjusted. The BOS passed and adopted the new fee schedule on that same date. The new fees will be effective July 1, 2008.

Cal/EPA Response, (Update 3): Cal/EPA is pleased to learn the BOS passed and adopted new fees. In the next deficiency progress report, provide Cal/EPA with a copy of the new fee schedule.

CUPA Corrective Action, (Update 4): Colusa County Environmental Health has incorporated its new fee schedule. The new fees were effective July 1, 2008

Cal/EPA Response (Update 4): Upon receipt of the new fee schedule Cal/EPA will consider this deficiency corrected.

CUPA Corrective Action, (Update 5): A copy of the new fee schedule is submitted for your review as correction to this deficiency.

Cal/EPA Response (Update 5): Cal/EPA has received and reviewed the copy of the new fee schedules, and considers this deficiency corrected.

Deficiency 2: The CUPA is not citing violations in a manner consistent with the definition of Minor, Class II, and Class I as provided in statute and regulations.

Preliminary Corrective Action(s): Immediately, the CUPA shall begin properly classifying violations and taking formal enforcement against businesses as necessary. By November 5, 2007, the CUPA will begin taking formal

enforcement against ABA Energy and Vintage Production California LLC. After November 5, 2007, the CUPA will provide Cal/EPA and DTSC with updates every 90 days on their progress towards achieving final settlement with ABA Energy and Vintage Production California LLC.

CUPA Corrective Action, (Update 1): Colusa County Environmental Health has had clarification on citing violations. Our inspections have become more efficient in regards to identifying violations and classifying them correctly as well. We have not been able to proceed any farther with enforcement of ABA Energy and Vintage Production. Staffing issues are still paramount within our department. Until we can become fully staffed, we will be in survival mode.

Cal/EPA and DTSC Response (Update 1): Cal/EPA and DTSC feel the action taken by Colusa County to properly classify violations sufficiently addresses this part of the deficiency. However; Cal/EPA and DTSC do not feel that Colusa County is adequately addressing the second part of this deficiency that requires Colusa County to take formal enforcement against ABA Energy and Vintage Production. Formal enforcement options include issuing the facility an Administrative Enforcement Order or referring the case to Colusa County's prosecuting agency, a state agency, or the U.S. EPA. Please feel free to contact Cal/EPA for assistance in developing the AEO action or for referral assistance.

CUPA Corrective Action, (Update 2): Colusa County has recently attended the 2008 CUPA conference. The Director of Health and Human Services as well as the Director of Environmental Health attended the enforcement track. This was done to obtain the information from our peers, so that we can follow suit. On 2/8/08 a discussion regarding the AEO process occurred with our Board of Supervisors Liaison & on 2/11/08 the same discussion occurred with County Counsel.

Cal/EPA and DTSC Response (Update 2): It is encouraging that the Directors attended the enforcement track of the 2008 CUPA conference. Cal/EPA and DTSC would like to know how this information will be disseminated to the CUPA staff that perform the inspections and assist with the formal enforcement. Please provide an update on the specific steps you are taking to put in place a formal enforcement process and how you plan to apply this process to ABA Energy and Vintage Production cases. The next progress report is due May 5, 2008.

CUPA Corrective Action, (Update 3): The Colusa County Environmental Health Director and Colusa County Director of Health & Human Services attended the enforcement track at the CUPA Conference in February. CCEHD is currently submitting its first AEO to County Counsel for review. We anticipate that the AEO will be issued by June 15th, 2008. All fines have been set with accordance to State penalties.

Cal/EPA and DTSC Response (Update 3): Update 3 partially addressed our comments to Update 2. We still need information on how 1) the CUPA conference enforcement track training will be disseminated to the CUPA staff that perform the inspections and assist with the formal enforcement, and 2) how you plan to apply the enforcement process you have begun to put in place to the ABA Energy and Vintage Production cases.

CUPA Corrective Action, (Update 4): Update not provided

Cal/EPA and DTSC Response (Update 4): The CUPA has not provided comments to Update 4. Cal/EPA and DTSC consider this deficiency still outstanding.

CUPA Corrective Action, (Update 5): A copy of the Tri County Petroleum Consent Order is provided to address this deficiency.

Cal/EPA and DTSC Response (Update 5): DTSC considers this deficiency corrected.

Deficiency 4: The CUPA did not have a CalARP dispute resolution procedure.

Preliminary Corrective Action(s): By October 25, 2007, the CUPA must develop and adopt a CalARP dispute resolution procedure that addresses all of the elements of T19 CCR 2780.1.

CUPA Corrective Action, (Update 1): Colusa County is currently working on a dispute resolution procedure. The aforementioned document will be complete by December 31, 2007 and forwarded to the State for review.

Cal/EPA and OES Response (Update 1): Cal/EPA and OES accept the progress Colusa County is making towards correcting this deficiency. Cal/EPA and OES will continue to track the progress being made to correct this deficiency via the deficiency progress reports. The next report is due February 14, 2008.

CUPA Corrective Action, (Update 2): The dispute resolution is still under review. Colusa County Environmental Health should have a finished product by June 30th, 2008.

Cal/EPA and OES Response (Update 2): Cal/EPA and OES accept the progress Colusa County is making towards correcting this deficiency and approve the revised timeline finalizing the CalARP dispute resolution by June 30, 2008. Cal/EPA and OES will continue to track the progress being made

to correct this deficiency via the deficiency progress reports. The next report is due May 5, 2008.

CUPA Corrective Action, (Update 3): The dispute resolution will be in place by the aforementioned time line of June 30, 2008

OES Response, (Update 3): Please forward a copy of the finalized dispute resolution to CalEPA and to OES when available. If not finalized by the target date, please update your progress on the next quarterly report.

CUPA Corrective Action, (Update 4): The dispute resolution has been put into our CALARP Dispute Resolution Section.

Cal/EPA and OES Response (Update 4): Upon receipt of a copy of the finalized procedure, this deficiency will be corrected.

CUPA Corrective Action, (Update 5): Attached is our corrected dispute resolution for your review.

Cal/EPA and OES Response (Update 5): The attached procedure meets all the requirements of 19CCR 2780.1. The deficiency has been corrected.

Deficiency 7: The CUPA is neither regulating farms under the business plan program, nor properly exempting them from the provisions of the business plan program.

Preliminary Corrective Action(s): By July 25, 2008, the CUPA must develop an action plan to either regulate agricultural handlers under the business plan program, or to properly apply one or more of the available exemptions.

CUPA Corrective Action, (Update 1): Colusa County Environmental Health is currently trying to locate the local ordinance/policy that the County was using to exempt farms from the CUPA Program. Also, we would like for the State OES to provide training and meet with our Board of Supervisors, so that they could educate us on all the regulations that we need to follow.

Cal/EPA and OES Response, (Update 1): Cal/EPA and OES accept the progress Colusa County is making towards correcting this deficiency. OES can provide Colusa County, including the Board of Supervisors, with training on the business plan program, specifically with regard to agricultural handlers. In the next progress report, provide OES a copy of the local ordinance/policy that the County was using to exempt farms.

CUPA Corrective Action, (Update 2): Colusa County Environmental Health is attempting to find that provision. We have a request to the former PA who

was regulating the HMBP's. If we can't locate ordinances/policies by 3/1/08. We will re-examine the farm exemption.

Cal/EPA and OES Response, (Update 2): Cal/EPA and OES accept the progress Colusa County is making towards correcting this deficiency. Cal/EPA and OES feel the CUPA is on there way towards meeting the July 25, 2008, to develop an action plan to either regulate agricultural handlers under the business plan program, or to properly apply one or more of the available exemptions. Continue to update Cal/EPA and OES on the progress via deficiency progress reports.

CUPA Corrective Action, (Update 3): Colusa County Environmental Health could not locate any ordinances which would exempt farmers from the CUPA Program. We would like the State OES to make a presentation to the BOS/Farm Bureau. This training will help educate the public and staff about each or our roles in the CUPA Program.

OES Response, (Update 3): To arrange for an OES presentation to your governing Board or any other group, please call Brian Abeel at (916) 845-8768 or Jack Harrah at (916)845-8759.

CUPA Corrective Action, (Update 4): As stated in earlier updates, we would like State OES to conduct a scheduled meeting with the constituents of Colusa County.

OES Response, (Update 4): The situation remains the same as at update #3, and OES' response is the same as the response to update #3. Contact Brian Abeel at (916) 845-8768 to arrange a presentation, and one or more of OES HazMat staff will travel to Colusa County and outline program requirements and the CUPA's options to whatever audience you feel needs the information.

CUPA Corrective Action, (Update 5): Colusa County will make arrangements with Jack Harrah & Brian Abeel to provide a meeting/training with Colusa County and its constituents.

OES Response, (Update 5): We await a call from the CUPA scheduling a meeting.